

(5) If an MA EP, or entity that employs an MA EP, or in which an MA EP has a partnership interest, MA-affiliated eligible hospital, or other party contracting with the MA organization, fails to comply with an audit request to produce applicable documents or data, CMS recoups all or a portion of the incentive payment, based on the lack of applicable documents or data.

(g) *Coordination of payment with FFS or Medicaid EHR incentive programs.* (1) If, after payment is made to an MA organization for an MA EP, it is determined that the MA EP is eligible for the full incentive payment under the Medicare FFS EHR Incentive Program or has received a payment under the Medicaid EHR Incentive Program, CMS recoups amounts applicable to the given MA EP from the MA organization's monthly MA payment, or otherwise recoups the applicable amounts.

(2) If, after payment is made to an MA organization for an MA-affiliated eligible hospital, it is determined that the hospital is ineligible for the incentive payment under the MA EHR Incentive Program, or has received a payment under the Medicare FFS EHR Incentive Program, or if it is determined that all or part of the payment should not have been made on behalf of the MA-affiliated eligible hospital, CMS recoups amounts applicable to the given MA-affiliated eligible hospital from the MA organization's monthly MA payment, or otherwise recoups the applicable amounts.

[75 FR 44565, July 28, 2010, as amended at 77 FR 54158, Sept. 4, 2012]

§ 495.206 Timeframe for payment to qualifying MA organizations.

(a) CMS makes payment to qualifying MA organizations for qualifying MA EPs under the MA EHR incentive program after computing incentive payments due under the Medicare FFS EHR incentive program according to § 495.102.

(b) Payments to qualifying MA organizations for qualifying MA-affiliated eligible hospitals under common corporate governance are made under the Medicare FFS EHR incentive program, following the timeline in specified in § 495.104 of this part. To the extent sufficient data do not exist to pay quali-

fying MA-affiliated eligible hospitals under common corporate governance under the Medicare FFS EHR incentive program, payment is made under the MA EHR incentive program, following the same timeline in § 495.104 of this part.

§ 495.208 Avoiding duplicate payment.

(a) CMS requires a qualifying MA organization that registers MA EPs for the purpose of participating in the MA EHR Incentive Program to notify each of the MA EPs for which it is claiming an incentive payment that the MA organization intends to claim, or has claimed, the MA EP for the current plan year under the MA EHR Incentive Program.

(b) The notice must make clear that the MA EP may still directly receive an EHR incentive payment if the MA EP is entitled to a full incentive payment under the FFS portion of the EHR Incentive Program, or if the MA EP registered to participate under the Medicaid portion of the EHR Incentive Program and is entitled to payment under that program—in both of which cases no payment would be made for the EP under the MA EHR incentive program.

(c) An attestation by the qualifying MA organization that the qualifying MA organization provided notice to its MA EPs in accordance with this section must be required at the time that meaningful use attestations are due with respect to MA EPs for the payment year.

(d) Unless a qualifying MA EP is entitled to a maximum payment for a year under the Medicare FFS EHR incentive program, payment for such an individual is only made under the MA EHR incentive program to a qualifying MA organization.

(e) Payment to qualifying MA organizations for a qualifying MA-affiliated eligible hospital under common governance only occurs under the MA EHR incentive program to the extent that sufficient data does not exist to pay such hospital under the Medicare FFS hospital incentive program under § 495.104 of this part. In no event are EHR incentive payments made for a hospital for a payment year under this section to the extent they have been